STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX Petitioner **File No. 85063-001**

v

Physicians Health Plan of South Michigan
Respondent

_____/

Issued and entered
This 13th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 12, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq*. On September 19, 2007, after a preliminary review of the material submitted, the Commissioner accepted the request.

The case required analysis by a medical professional. Therefore the Commissioner assigned the matter to an independent review organization (IRO) which submitted its recommendation to the Office of Financial and Insurance Services on October 4, 2007.

II
FACTUAL BACKGROUND

The Petitioner is a Physicians Health Plan of South Michigan (PHP) member. He is covered under a group high deductible health plan which has a deductible of $2,100.00 per calendar year. His benefits are defined in the PHP certificate of coverage (the certificate).

On December 21, 2006, the Petitioner had a percutaneous lumbar diskectomy (PLD) procedure. PHP denied coverage for the surgery on the basis that PLD is an experimental, investigational, or unproven service and therefore excluded from coverage.

The Petitioner appealed the denial and exhausted PHP's internal grievance procedures. PHP issued a final adverse determination dated August 8, 2007.

III
ISSUE

Did PHP properly deny the Petitioner authorization and coverage for PLD?

IV
ANALYSIS

Petitioner's Argument

The Petitioner had a history of chronic low back and right leg pain. He was treated with spinal injections and narcotic pain medications but his pain continued. His 2006 MRIs showed moderate-sized right posterolateral disk protrusion at L5-S1 and broad-based disk bulging with bilateral facet hypertrophy at L4-5.

After failing injections, therapy, pain medications, and other conservative treatments, the Petitioner's surgeon, XXXXX, MD, of the XXXXX, determined that surgery was needed. Dr. XXXXX thought the PLD was an appropriate alternative to an open surgical procedure and the best choice for the Petitioner because, although he has disk protrusions, his disks are still fully intact. Dr. XXXXX believes that the PLD procedure is safe, effective, and proven and best for the Petitioner. He said:

> Given the known limitations with open surgical procedures, [the Petitioner] and I appropriately decided to proceed with a less aggressive, less invasive, and safer procedure: percutaneous discectomy. * * * I assure you that I employ conservative and well-defined patient selection criteria for choosing percutaneous discectomy candidates. This means choosing only those patients with contained, herniated discs - optimally measuring ≤1/3 the area of the canal diameter. Candidates may or may not experience axial pain, but they should all experience radicular pain corresponding to the level of disc involvement. Candidate

> must have failed other forms of conservative therapy for a minimum of 6 – 8 weeks. The therapy is not proven for patients with a degenerative disc condition, and is contra-indicated for patients with spinal fracture or tumor; extruded disc; disc height of <75%; or moderate to severe spinal stenosis. My internal quality control measures on over 60 cases demonstrate similar outcomes to those published in the peer-reviewed literature.

The Petitioner believes PHP should authorize and cover the PLD procedure.

PHP'S Argument

PHP denied coverage for the Petitioner's PLD, because it said the procedure is experimental, investigational, or unproven. The certificate (page 37) excludes experimental, investigational, or unproven services from coverage:

> **Section 2. What's Not Covered--Exclusions**
>
> *** * ***
>
> **E. Experimental, Investigational or Unproven Services**
>
> Experimental, Investigational or Unproven Services are excluded. The fact that an Experimental, Investigational, or Unproven Service, treatment, device or pharmacological regimen is the only available treatment for a particular condition will not result in Benefits if the procedure is considered to be Experimental, Investigational or Unproven in the treatment of that particular condition. This exclusion does not apply to antineoplastic drugs for which Benefits are available as described in *Antineoplastic Therapy* in Section1: What's Covered—Benefits. These terms are defined in Section 10 of Defined Terms.

PHP believes the prevailing peer reviewed medical literature does not establish the PLD procedure as safe and effective for pain. PHP says that it asked XXXXX, to review the Petitioner's case and XXXXX said that the procedure "is considered experimental/investigational as the health benefits and even the risk of this procedure are not yet adequately documented in the scientific literature. * * * This procedure is not standard of care for the [Petitioner's] condition."

PHP asserts that the procedure does not qualify for coverage under the Petitioner's certificate.

Commissioner's Review

The issue in this case is whether the Petitioner's PLD surgery is experimental, investigational, or unproven and therefore excluded from coverage under the terms of the certificate. To help answer this question, the Commissioner sought a review and recommendation by an IRO.

The IRO reviewer is certified by the American Board of Physical Medicine and Rehabilitation with an added certification in the subspecialty of pain management; certified by the American Osteopathic College of Rehabilitation Medicine; a member of the Physiatric Association of Spine, Sports, and Occupational Rehabilitation; a member of the North American Spine Society; a member of American College of Sports Medicine; a member of the American Academy of Physical Medicine and Rehabilitation; is published in the peer-reviewed medical literature; and is in active practice. The IRO reviewer said:

> It is the determination of this reviewer that disc nucleoplasty (percutaneous discectomy) is experimental, investigational, and unproven.
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> * * *
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> There are no large, randomized, controlled, double-blinded studies published in the peer reviewed medical literature to establish the safety and efficacy of percutaneous discectomy. The medically accepted and scientifically accepted evidence does not demonstrate that percutaneous discectomy produces greater benefits than an open discectomy. Therefore, percutaneous discectomy produces greater benefits than an open discectomy.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the recommendation is afforded deference by the Commissioner since it is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why the IRO reviewer's judgment should be rejected in the present case and accordingly finds that the Petitioner's PLD is experimental, investigational, and unproven and therefore not a covered benefit.

V
ORDER

The Commissioner upholds PHP's August 8, 2007, final adverse determination in the Petitioner's case. PHP properly denied the Petitioner coverage for the percutaneous lumbar diskectomy procedure (disk nucleoplasty).

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.